

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 3056-03
BILL NO. HCS for HB 1215 & 1240
SUBJECT: Crimes and Punishment; Science and Technology.
TYPE: Original
DATE: February 1, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	(Exceeds \$405,895)	(Exceeds \$419,326)	(Exceeds \$427,610)
Total Estimated Net Effect on <u>All</u> State Funds	(Exceeds \$405,895)	(Exceeds \$419,326)	(Exceeds \$427,610)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	(Exceeds \$200,000)	(Exceeds \$200,000)	(Exceeds \$200,000)

Numbers within parentheses: () indicate costs or losses

This fiscal note contains 10 pages.

FISCAL ANALYSIS

ASSUMPTION

In response to a similar proposal, officials of the **Office of the State Courts Administrator (CTS)** assumed this proposal would make changes in various computer-related laws and create several new related crimes. The legislation would also change the law relating to child pornography and create a new series of offenses. There may be some increase in the number of cases filed. CTS would not expect any significant impact on the budget of the judiciary.

Officials from the **Department of Elementary and Secondary Education (DES)** assume the proposal revises laws relating to computer crimes. It would require public schools, state colleges, universities, vocational schools, technical schools, and libraries with computers accessing the Internet to ensure the computers contain software designed to prevent minors from gaining access to material which is pornographic for minors, or to purchase Internet connectivity from an ISP that provides filtering services.

DES estimates that there are 140,286 computers around Missouri school districts with Internet connectivity. 42% of districts report using filtering software on 85% of their computers. The distribution of these computers across districts is not known. Filtering software ranges in cost from \$0 to \$25. Additionally, software prices and capabilities vary according to the target age level. Given this information, DES believes the cost would be significant, i.e. in excess of \$100,000; however, DES cannot construct a specific estimate.

In response to a similar proposal, officials from the **Office of the State Public Defender** assumed that existing staff could provide representation for those 15 - 25 cases arising where the indigent persons were charged with increased penalties for computer crimes, as well as for those 5 - 10 cases arising where indigent persons were charged with the crime of indecent solicitation of a child. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

Officials from the **Office of Prosecution Services** and the **Department of Public Safety** assume there would be no fiscal impact to their agencies as a result of this proposal.

In response to a similar proposal, officials from the **Office of the Attorney General (AGO)** assumed the AGO has already seen a significant increase in consumer fraud cases over the Internet. This proposal provides Missouri with jurisdiction over cases where a Missouri citizen is a victim of a consumer scam or other crime. The AGO anticipates a need for a high tech crimes unit to investigate and prosecute cases where the Internet is used in criminal activity. AGO anticipates this unit would include the following: one (1) Assistant Attorney General IV,

ASSUMPTION (continued)

two (2) Assistant Attorney General II's, and two (2) Investigator's. In addition there would be additional equipment and computer needs in out years as changes in technology occur.

In response to a similar proposal, officials from the **Office of the Cole County Prosecuting Attorney** assumed generally that the enactment of a criminal statute which criminalizes conduct heretofore otherwise legal has only a small impact on county prosecutors' overall workload. Nevertheless, the creation of new criminal statutes requires that existing prosecutor case management and case reporting systems be upgraded. The total cost of these upgrades is approximately \$250,000 per year. Some percentage of that cost is due to the enactment of new criminal statutes. The conduct outlined in the proposal is, for the most part, already prohibited by other criminal statutes. Thus the proposal would not result in increased workloads. Even though the conduct is already criminal, the fact that new statutes are being created would have the fiscal impact described above.

Due to the lack of an increased workload, **Oversight** assumes the costs to upgrade the case management/reporting systems, allocable to this proposal, would be minimal; therefore, no fiscal impact will be included in this fiscal note for the Office of the Cole County Prosecuting Attorney.

In response to a similar proposal, official from the **Office of the Boone County Prosecuting Attorney** assumed the proposed legislation will have an unknown fiscal impact on their agency.

Oversight assumes the costs, allocable to this proposal would be minimal; therefore, no fiscal impact will be included in this fiscal note for the Office of the Boone County Prosecuting Attorney.

In response to a similar proposal, officials from the **Department of Corrections (DOC)** stated that they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in this proposal. An increase in commitments would depend on the utilization by prosecutors and the actual sentences imposed by the court. If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs either through incarceration (at least \$35.00 per inmate, per day) or through supervision provided by the Board of Probation and Parole (at least \$3.00 per offender, per day). Due to the wide variance of newly created crimes and punishments, the fiscal impact as it relates to the DOC is unknown.

The DOC anticipates that new beds might have to be constructed to accommodate the number of offenders receiving longer sentences due to this proposal. At this time, the DOC is unable to determine the number of people that would be convicted under the provisions of this proposal to

ASSUMPTION (continued)

estimate the fiscal impact for additional capital improvements. Estimated construction cost for one new maximum security inmate bed is \$48,800.

Oversight assumes the proposal could result in more offenders being incarcerated or placed on probation. Additional costs for supervision and care by the DOC, although unknown, would likely exceed \$100,000 annually.

In response to a similar proposal, officials from **Southeast Missouri State University (SEMO)** assumed the proposal would affect approximately 200 computers in the library. All other computers on campus are not for public use. SEMO estimates costs of \$100 annually per machine for software, annual upgrades, labor and maintenance to comply with the legislation.

Missouri has approximately twenty, state-supported colleges and universities. **Oversight** assumes these institutions have similar computer facilities and will also incur costs similar to those estimated by SEMO. Even though these costs would be incurred, Oversight assumes the costs would be absorbed within each institution's budget and would not expect the institutions to request an increased appropriation as a result.

In response to similar legislation, officials from the **Missouri River Regional Library** assume they would need one FTE Network Assistant (\$46,000) and one FTE Library Assistant (\$21,804). They would need equipment costing approximately \$30,000 annually. They also estimate needing web site registrations, database licensing and filtering software costing approximately \$125,000 annually.

In response to similar legislation, officials from the **Daniel Boone Regional Library** assume the proposal would result in personnel costs of approximately \$150,000 annually; capital improvements of approximately \$72,000 in FY 2001; and computer software and supplies of \$43,000 in FY 2001 and approximately \$9,000 annually in subsequent fiscal years.

In response to similar legislation, officials from the **Secretary of State's Office (SOS)** state Section 181.020(4), RSMo, directs the Missouri State Library to "furnish information and counsel as to the best means of establishing and maintaining libraries, selection of materials, cataloging, and other details of library management." To that end, the State Library employs staff within the Library Development Division to carry out this function. Library Development staff provide assistance through one on one consultation and training sessions. It is estimated that questions from public library directors, trustees, and those maintaining the software on library computers would require the services of the equivalent of .5 FTE. Personnel costs for .5 FTE (\$18,240) Library Consultant are based on budget rate for the position. Salary increases are projected at 4%. Expense and Equipment calculations are \$3,352 per each new .5 FTE. The

ASSUMPTION (continued)

Oversight Division used salaries increases of 2.5% in the fiscal impact.

SOS officials state it would not be possible to project a total cost of public libraries to install filtering software. Costs for filtering software vary widely by vendor and type, number of computer stations, and whether the software is installed on each "client" computer workstation or on a central server. The web pages of a sampling of filtering software vendors indicate approximate annual costs in the following ranges: \$150 for a site with 5 computers; \$500 to \$800 for 25 computers; and up to \$2,500 or more for a site with 125 computers. Several large library systems with many branches would have 100 or more computer stations requiring filtering software. Libraries choosing to install the filtering software on a server could also need to purchase suitable equipment for the installation. SOS officials also assume public libraries could have additional staff costs due to the legislation. Staff time required for installation and maintenance of filtering software could be significant. If all terminals have filtering software, requests from adults for access to unfiltered sites might require assistance from library staff. Requests to have sites unblocked would be processed individually, and could require individual adjustments of the software. Library staff would also have to monitor the use of the computer workstation, to ensure the filtering software is active when the workstation is used by minors. Library technical services staff would also need to spend considerable amounts of time, at least initially, checking to see that the filtering software did not block access to sites the library did not wish to block.

The proposal would require the SOS to establish rules and regulations for enforcement. The estimated cost of a page in the Missouri Register is \$22.50. The estimated cost of a page in the Code of State Regulations is \$26.50. The actual costs could be more or less than the number given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules, filed, amended, rescinded or withdrawn.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Cost</u> - Secretary of State's Office			
Personal Service	(\$15,200)	(\$18,696)	\$19,163
Fringe Benefits	(\$4,674)	(\$5,749)	(\$5,893)
Expense and Equipment	<u>(\$3,646)</u>	<u>(\$300)</u>	<u>(\$300)</u>
Total <u>Cost</u> -SOS	(\$23,520)	(\$24,745)	(\$25,356)

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>Cost - Office of Attorney General</u>			
Salaries	(\$144,583)	(\$177,838)	(\$182,283)
Fringe benefits	(44,459)	(54,685)	(56,052)
Equipment and Expense	(93,333)	(62,058)	(63,919)
Total	(\$282,375)	(\$294,581)	(\$302,254)
<u>Cost - Department of Corrections (DOC)</u> Increased beds	(Exceeds \$100,000)	(Exceeds \$100,000)	(Exceeds \$100,000)
ESTIMATED EFFECT ON GENERAL REVENUE FUND	(Exceeds \$405,895)	(Exceeds \$419,326)	(Exceeds \$427,610)
<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
PUBLIC SCHOOL DISTRICTS			
<u>Costs - Internet Access Filtering</u>	(Exceeds \$100,000)	(Exceeds \$100,000)	(Exceeds \$100,000)
PUBLIC LIBRARIES			
<u>Costs - Internet Access Filtering</u>	(Exceeds \$100,000)	(Exceeds \$100,000)	(Exceeds \$100,000)
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS	(Exceeds \$200,000)	(Exceeds \$200,000)	(Exceeds \$200,000)

FISCAL IMPACT - Small Business

No direct fiscal impact on small businesses would be expected due to this proposal.

DESCRIPTION

This proposal makes changes to provisions concerning computer crimes. The proposal:

- (1) Amends the current statute providing civil remedies for victims of computer crime by adding owners or lessees of computers or computer equipment to those who may utilize the statute. Currently, only owners or lessees of computer systems, networks, programs, or services may use

DESCRIPTION (continued)

the statute. The proposal also amends the current statute to allow for the recovery of expenses incurred to block future access by the perpetrators of computer invasion of privacy or unlawful computer communications (537.525);

(2) Establishes the jurisdiction and venue for crimes committed through use of a computer as any county in which any act was performed in furtherance of the crime, or any county in which the accused had control of materials or objects used in furtherance of the crime, or any county in which computers or computer equipment used in furtherance of the crime are located, or any county from which, in which, or through which access to a computer or computer network was made (541.033);

(3) Amends current law to allow law enforcement to obtain warrants to search for and seize child pornography for other than evidentiary purposes without first holding an adversarial hearing to determine whether the matter is obscene (542.281);

(4) Extends the statute of limitations for computer crimes to one year after discovery of the offense, but not more than 3 years after the offense occurs (556.036);

(5) Expands the harassment statute to include electronic and in-person communications, and increases the penalty for communicating a threat to commit a felony from a class A misdemeanor to a class D felony (565.090);

(6) Clarifies that the offense of aggravated stalking includes credible threats made by electronic communications, in person, or by posted messages publicly accessible via a computer (565.225);

(7) Creates the class C felony crime of invasion of privacy in the first degree when nude photographs or images made without the subject's consent are distributed or made accessible by computer. The proposal amends the current invasion of privacy statute, which does not require the distribution or transmission of images, to make it a crime in the second degree (565.253);

(8) Extends the duty to computer providers, installers or repair persons, and Internet service providers to report to law enforcement if they know of or see images depicting child pornography. Currently, this duty is only imposed on film and print processors. The proposal also raises the age of children that the statute applies to from 17 to 18 (568.110);

(9) Expands the crime of causing catastrophe to include the sending of a computer virus and altering a computer program that controls a public service (569.070);

DESCRIPTION (continued)

- (10) Amends the definitions section of the child pornography laws to include the creation and sending of child pornography via computers (573.010). The proposal also amends the crime of promoting child pornography in the first and second degree to include the creation of child pornography with the intent to electronically transfer it (573.025, 573.035);
- (11) Creates the crime of possession of child pornography in the first degree for possessing or controlling 1,000 or more items of child pornography, which is a class C felony for the first offense and class B felony for the second and subsequent offenses (573.036). The proposal amends the current possession of child pornography statute to make it a second degree crime for possessing or controlling less than 1,000 items of child pornography, which is a class D felony for the first offense and a class C felony for the second and subsequent offenses (573.037). The proposal also creates the crime of furnishing child pornography to a minor, which is a class D felony for the first offense, and a class C felony for the second and subsequent offense (573.045);
- (12) Amends the evidentiary statute to include newly created first and second degree possession of child pornography and furnishing child pornography to a minor (573.050);
- (13) Repeals current computer crime statutes (569.093-569.099) and replaces them with additional crimes. The proposal amends the definitions sections of current computer crime statutes by updating and expanding existing definitions, and adding 5 more terms (578.500);
- (14) Amends the crime of tampering with computer data by deleting the act of accessing a computer and intentionally examining information about another person as a violation of the statute. The proposal also increases the penalty from a class D to a class C felony, and increases the value of property from \$150 to \$500 (578.503);
- (15) Amends the crime of tampering with computer equipment by increasing the penalty from a class D to a class C felony, and increases the value of property from \$150 to \$500 (578.506);
- (16) Amends the crime of tampering with computer users by increasing the penalty from a class D to a class C felony, and increases the value of property from \$150 to \$500 (578.509);
- (17) Creates the crime of computer invasion of privacy when a person uses a computer or computer network, program, software, or system to intentionally examine without authority personal or financial information of another. The penalty is a class D felony unless the crime is committed to obtain property worth \$500 or more, which is a class C felony (578.512);
- (18) Creates the crime of unlawful computerized communications when a person, for purposes

DESCRIPTION (continued)

of frightening, intimidating, threatening or disturbing another, communicates by computer: a threat to commit any felony, which is a class D felony; a communication with coarse, offensive language, which is a class A misdemeanor; an anonymous communication, which is a class A misdemeanor; or communications repeatedly after receiving notice from the receiver to stop, which is a class D felony (578.515);

(19) Gives prosecuting attorneys and the Attorney General concurrent jurisdiction to bring actions under the new computer crimes statutes, and for any case involving computers in this state (578.518, 578.521); and

(20) Requires that school districts, technical and vocational schools, and libraries that provide computers accessible to students or the public, on or before July 1, 2002, either use software designed to prevent minors from accessing pornographic material or purchase Internet services from a provider that filters services to limit minors' access to pornographic material.

(21) This proposal creates the crime of indecent solicitation of a child and makes it a class D felony. Indecent solicitation of a child is committed when a person at least 17 years old solicits or arranges, by means that include but are not limited to oral and written communications and communications by electronic means, various acts with a child less than 13 years old. These acts include forcible rape, statutory rape in the first degree, sexual assault, forcible sodomy, statutory sodomy in the first degree, child molestation in the first and second degree, deviate sexual assault, or sexual abuse. Mistake of age is not a defense (568.085). This substitute adds this section to the previous proposal.

This legislation is not federally mandated, would not duplicate any other program, and could require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Office of Prosecution Services
Office of State Public Defender
Department of Public Safety
Office of the Attorney General
Office of State Courts Administrator
Department of Elementary and Secondary Education
Cole County Prosecuting Attorney

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SOURCES OF INFORMATION(continued)

Boone County Prosecuting Attorney
Southeast Missouri State University
Office of Secretary of State
Missouri River Regional Library
Daniel Boone Regional Library

A handwritten signature in black ink, appearing to read "Jeanne Jarrett". The signature is stylized with a large, looped initial "J" and a cursive script for the rest of the name.

Jeanne Jarrett, CPA
Director
February 1, 2000